

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/20/04

AGENDA ITEM 6b

WORK SESSION ITEM _____

TO: Mayor and City Council
Redevelopment Agency Board Members

FROM: Director of Community and Economic Development

SUBJECT: Consideration of a Disposition and Development Agreement with Cinema Place Hayward, LLC for Development of an Entertainment-oriented Retail Complex at B Street and Foothill Boulevard

RECOMMENDATION:

It is recommended that the City Council and the Redevelopment Agency Board adopt the attached resolutions authorizing the City Manager/Executive Director to execute a Disposition and Development Agreement and Ground Lease with Cinema Place Hayward, LLC and cooperation agreement.

DISCUSSION:

In May 2002 the Agency Board authorized the acquisition of the 2.4-acre former Albertsons Supermarket property located at 22695 Foothill Boulevard, including the remainder of a long-term leasehold in favor of Albertsons. The Agency's goal in acquiring the property was to redevelop the site as a lively, pedestrian-oriented anchor for the eastern end of the historic downtown area. On February 18, 2003 the Agency Board authorized staff to enter into negotiations with BHV Hayward, LLC, a limited liability company formed by Blake-Hunt Ventures, for the purpose of redeveloping the property into a retail/entertainment complex. Over the past 18 months, the Developer and staff have met numerous times to discuss the proposed layout of the site, to formulate business terms for a proposed ground lease of the property and to discuss the developer's progress in obtaining anchor tenants for the property. Last winter, the Developer obtained a Letter of Intent to lease space at this Project from Cost Plus, which would occupy over 18,000 square feet of the ground level space, as well as from Century Theatres.

The site plan and architecture is discussed in the companion agenda report regarding planning approvals, and was considered by Council prior to this item. The City Council has also reviewed the CEQA findings for this Project as part of the Project Application.

THE PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT:

The proposed Disposition and Development Agreement (DDA) is now with Cinema Place Hayward, LLC ("the Developer"). This company consists of a partnership between BHV Hayward, LLC and a limited liability company set up by Pacific Coast Capital Partners, which is a real estate venture capital company that is supplying the equity capital for this Project.

The DDA sets forth certain agreements with respect to the development of the property. The Ground Lease is an attachment to the DDA, and in order for the Lease to become effective, a number of conditions must be fulfilled. The conditions for transferring possession of the property include the following:

- All Project entitlements, subdivision maps, building permits and other permits have been received or are ready to be issued;
- The Agency has completed all below-ground environmental remediation as required, except possible ongoing monitoring wells, and has obtained environmental clearance from the Regional Water Quality Control Board;
- Evidence that private financing is in place to fund the cost of the retail/cinema and private parking improvements;
- Evidence that public financing is in place to fund the cost of the upper two floors of public parking improvements;
- A general contractor's Guaranteed Maximum Price construction contract is in place for the entire Project, including the parking structure;
- The Developer has executed sub-leases with a first class movie theater operator for a 12-screen movie theater, and with a well-known chain store retailer for an 18,000 square foot store;
- The City and Developer have executed and recorded a Parking Operation and Maintenance Agreement; and
- The Agency and theater operator have entered into an Agreement regarding certain Agency's obligations in the event that another multi-screen theater opens within the City of Hayward.

With respect to the Agency's responsibility for environmental remediation, the Agency has previously determined that the site has moderate levels of contamination due to the historic operation of dry cleaners on the site. Agency environmental consultants have tested the site, and have consulted with the Regional Water Quality Control Board. In order to develop the site, the Agency may be required to maintain a groundwater monitoring well for a period of time and restrict use of the site to commercial development. In addition, the Developer will likely be required to install a soil vapor barrier at the start of construction as a mitigation measure. As the property owner, the Agency has ongoing liability for any other contamination that may be found below-ground. If such contamination is found during the period of site excavation, and the cost to remediate the condition is more than \$500,000, the Agency has the right to terminate the Lease at that time. The Developer has the responsibility to properly remove and dispose of asbestos or other contaminants in the existing building at the time it is

deconstructed. In addition, the Developer would be responsible for any non-hazardous below-ground structures.

It should be noted that the Sulfur Creek culvert traverses a portion of the site. This is a concrete arch culvert that lies just below the ground surface, and can be accessed by a manhole in the B Street sidewalk. The culvert has been inspected by a contractor to the Public Works Department and is in good condition. It is anticipated and desired by all parties that the culvert remain in place and that the new development span over the culvert.

The Developer's architect, Field Paoli, is providing design services for the Project as a whole and has sub-contracted with Watry Design to prepare the parking structure plans. The Agency will reimburse the Developer for its proportional share of the architectural expenses for the four-story parking structure based on the number of Agency spaces as a percentage of the total spaces in the structure. The lower two levels of the parking structure, containing approximately 172 spaces, will be for the exclusive use of the on-site retail tenants and the upper two levels of the parking structure, with approximately 184 spaces, will be owned by the City and will be available to the public, including retail and theater patrons. Based on the current parking space count, it is anticipated that the Agency's share of these costs will be 52%. The maximum amount that the Agency will pay for design costs is \$265,000, exclusive of design changes initiated by the Agency.

The DDA calls for the Developer to enter into a negotiated guaranteed maximum price contract with a general contractor for the entire Project. While the construction sub-contracts will be competitively bid, a negotiated maximum price with the general contractor will provide for more security in terms of final Project cost, as well as incentives for the work to be completed efficiently. Prior to the Developer taking possession of the property, the Agency will agree upon a maximum price for the parking structure, based on the formula outlined above for the design costs. In the event that the Agency's share of the parking structure equals \$18,000 per space or less (approximately \$3.3 million), the Agency agrees to pay that amount. Under the DDA, the Developer will require its contractors to pay prevailing wages, and to comply with the City and Agency's policy regarding disadvantaged and woman-owned businesses. In addition, the Agency agrees to pay the Developer a construction management fee of 5% of the cost of construction, at a maximum of \$165,000.

Construction of the Project would proceed according to a Schedule of Performance. It is anticipated that the Developer would submit construction documents to the City by January, 2005, and that building permits would be issued and the Developer would be prepared to take possession of the property by the Summer of 2005, and complete development within 18 months.

THE PROPOSED GROUND LEASE:

The Ground Lease is a separate document which, if approved would be executed concurrently with the DDA. However, the Lease would not become effective until the conditions outlined in the DDA are met or waived. The final date for the Developer to take possession of the

property is August 1, 2005. If the Developer has not taken possession of the property by that date, the Agreement may be terminated.

The term of the Lease will be for 50 years, plus two 5-year renewal options. In the event that the Agency does not actively exist in 50 years, the City will become the Landlord and property Owner. During the term of the Lease, the Tenant (i.e., the Developer) has ownership of the improvements on the property, with the exception of the City-owned portion of the parking structure. At the end of the Lease, the Tenant has the right to remove any personal property; however, the improvements and real estate fixtures will become part of the Landlord's property.

Under the Lease, the Tenant will not pay rent for the first five years of possession. For a significant portion of that time, the property would be under construction, or in its "lease-up" phase. Beginning in the sixth year of the lease, the Tenant would begin to pay rent to the Agency. The Base Rent that the Tenant would pay would start at \$50,000 per year.

In addition to the Base Rent, the Tenant would pay Percentage Rent, which is defined as 5% of the Gross Annual Rents produced by the Project (including any revenue from the parking), less the Base Rent amount. Percentage Rent would not be charged unless and until the Gross Annual Rents are at least \$1.5 million. Beginning in the 11th year and every ten years thereafter, the Base Rent would increase by a formula, such that the increase would be the greater of a 10% increase, or 80% of the average total rent (Base plus Percentage Rent) paid for the preceding three years.

Finally, beginning in the 25th year of the Lease, and every 10 years thereafter, the Base Rent will be adjusted as necessary to the Market Rental Value, by an appraisal which takes into account the then current lease rates applicable for the Project, given the property's permitted uses. In no event, would this result in a decrease in the total rent paid, nor would the increase to Base Rent exceed 20% per market adjustment period.

The Lease allows the Tenant to mortgage its leasehold interest in the property to an institutional lender, so that the Tenant can obtain construction and permanent financing for the Development. The Agency will not subordinate its fee title to a loan on the property, meaning that if the Tenant defaults on its loan, the lender does not have the right to take title to the Agency's land. However, the lender would have the right to assume the leasehold interest, in which case it would assume the rights and responsibilities of the Tenant. The Lease contains additional standard mortgagee protections, such as the requirement by the Agency to notify mortgagees if the Tenant defaults on the Lease, and the right of the mortgagee to cure the default or assume the Lease.

The Landlord would have reasonable but limited approval rights over the sub-lessees on the property. Under the Lease, the Agency is deemed to have approved both Cost Plus and Century Theaters, as well as certain other theater operators as tenants. In addition, the Agency is deemed to have approved any retailer of a first class chain retail store or restaurant, of the type and caliber found at the Olympia Place in Walnut Creek, and other specific theater anchored retail projects in the Bay Area. There are a few specifically excluded uses on the

property, such as dry cleaners with an on-site plant, stand-alone bars, adult motion picture theaters, and second hand or thrift stores.

Staff has had extensive discussion with both the Developer and with representatives of Century Theatres regarding the investment in downtown. The theater operator is making an investment reportedly in excess of \$10 million at this location for building costs, furnishings, fixtures and equipment. Unfortunately, because the downtown is still undergoing a renaissance and has yet to reach its full potential as a popular and successful retail location, there is a concern about the risk associated with locating a theater at this location. Of greatest concern is that another theater could open at a more accessible location, and draw away theater customers to such an extent that it is no longer feasible to operate the theater at this location. Staff does not view this scenario as likely, given that three multi-screen theaters have shut down in Hayward over the past five years. Nevertheless, the theater operator considers the potential to be risky enough to require additional measures during the period that it is amortizing its investment.

The Lease contains contingent liabilities in the event that the movie theater operator terminates its sub-lease with the Tenant due to another multi-screen theater (three or more screens or 200 or more seats), opening within the City. The theater operator is seeking a term of 20 years for this provision. The Agency's liability to the Tenant would be that the Tenant would revert to paying the Agency Percentage Rent only until such time as a new sub-tenant is found for the movie theater space. In addition, under a separate agreement with the theater tenant, the Agency would be liable to make a payment in the amount of \$5 million to account for the theater operator's loss of business value and its investment. The separate agreement would apply to the first theater operator only.

Under the Lease, the Tenant is responsible for maintaining its portion of the property in first class condition, and for paying all maintenance costs, including possessory interest taxes (in lieu of property taxes), specific amounts of insurance both during and after construction, and utility costs.

Under a separate Parking Agreement to be negotiated, the Tenant and the City/Agency will enter into a Parking Agreement which specifies how the on-site parking will be maintained. It is anticipated that the Tenant will contract with a third party to provide maintenance services for the entire structure, and that the Agency will pay for the City's portion of the maintenance costs. For purposes of operating the structure and ensuring that the Tenant's portion of the parking structure is not usurped by theater patrons and other longer-term parkers, the spaces in the lower two floors will be signed such that the parking spaces are marked for use on a 90-minute basis or less. The municipal parking on the upper two floors will be marked for two or more hour parking.

The separate Parking Agreement will also contain a commitment by the City to provide and maintain at least 750 parking spaces within the area bounded by A, Second, D and Watkins Streets that are free or validated for movie theater patrons. Currently, there are approximately 700 spaces in municipal parking lots within this area. The City is currently undertaking design work to add approximately 170 new spaces in the City Hall parking structure, and the proposed project would add approximately 184 new spaces. Finally, staff will soon be

bringing forward plans to add surface parking area to the existing Municipal Lot Two, and a reconfiguration of that lot which will add up to approximately 90 new spaces.

CONCLUSION:


Staff is recommending that the Agency Board and City Council approve the DDA and Lease. Due to its scale and the nature of the proposed tenants, the proposed Project has the potential to go beyond achieving the Agency's goal of creating a lively, pedestrian-oriented anchor for the east end of the B Street retail spine, and create a landmark attraction for the entire downtown area. Such a development will assist in creating a greater potential for success among other retailers and property owners not only on B Street, but along Foothill Boulevard, on C Street as well.

As required pursuant to Redevelopment Law, staff and the Agency's economic consultant, Keyser Marston Associates, prepared a report outlining the terms of the proposed DDA and Lease, as well as a re-use appraisal of the property that is proposed to be conveyed to the Developer. That report outlined the estimated costs and revenues to the Agency that would result from the proposed Project. The report concluded that the total of the Agency's costs under the Agreement, including both its land costs to date and its estimated parking costs would be approximately \$7.35 million. The Agency's total revenues over the life of the lease are estimated at approximately \$85 million. Discounted to present value, the total revenues are estimated at \$5.8 million. In addition, the City will have a garage asset worth its total estimated cost of \$3.7 million. As a result, the City and Agency would have a net gain of \$2.15 million. (Please see Attachment A.)

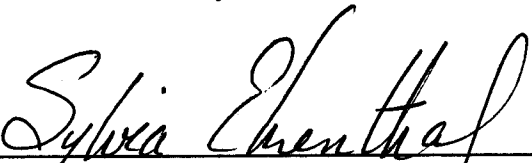
It is anticipated that during the next six months, staff will bring forward for the City Council's consideration certain amendments to the General Plan and Zoning Ordinance that will set conditions for the opening of new multi-screen movie theaters outside the downtown area. Such zoning ordinances and policies have been adopted in several California cities in recent years, including Santa Rosa, Sacramento, Davis, and Stockton. The consideration of such policies would provide additional assurance that the public and private sector's investment in the revitalization of the downtown will not be jeopardized.

Notice of this Joint Public Hearing was published in The Daily Review during the past two weeks, and a copy of Agency's Summary Report prepared pursuant to Health and Safety Code Section 33433 and the proposed DDA and Lease have been available in the City Clerk's office for the same period. Finally, the Hayward Redevelopment Advisory Committee reviewed the proposed project at its regular meeting on July 14, 2004, and adopted a motion in favor of the project.


Prepared by:


Maret Bartlett, Redevelopment Director

Recommended by:


Sylyia Ehrenthal, Director of Community
and Economic Development

Approved by:


Jesús Armas, City Manager

Attachments: Attachment A – Agency Costs and Revenues
Resolutions

ATTACHMENT "A"

CINEMA PLACE SUMMARY OF AGENCY COSTS AND REVENUE

Projected Gross Agency Costs

As of July 2004 the Agency has expended approximately \$3,539,000 to purchase the Property and bring it to a state of readiness for disposition to the Developer under the terms of the DDA. The Agency's costs to date include:

Land purchases, title & escrow	\$3,441,266
Legal	21,498
Property Maintenance	20,564
Environmental	34,676
Survey	29,115
Economic Consultant	21,970
Sub-total	\$3,569,089
Less Rental Receipt (Spirit Halloween Stores)	(\$30,000)
Net to date costs	\$3,539,089

It is estimated that an additional \$63,000 will be incurred prior to transferring the property to the Developer, as follows:

Legal	\$15,000
Environmental	\$30,000
Property Maintenance	\$18,000
Total Additional Costs	\$63,000

Under the DDA and Lease the Agency will have the following estimated liabilities:

Parking Garage Design Fees	\$265,000
Developer Construction Management Fee	\$165,600
City Parking Garage Construction Cost (at \$18,000 per space x 184 spaces)	\$3,312,000
Total LDA/Lease Costs	\$3,742,600
Total All Agency Costs of Proposed Development (Round to <u>\$7,350,000</u>)	\$7,344,689

Projected Revenue to the Agency

- 1. Revenue from the Lease of Property:** Based on the proposed Ground Lease Terms, and the lease rates projected by the Developer, the total rent received for the Property over the 50-year primary lease term is expected to be between \$6.8 and \$8.6 million. Discounted to present value, the total rents are estimated to be approximately \$1.3 million.
- 2. Revenue from Tax Increment:** The construction cost for the Project, minus the City's parking portion, is estimated to cost \$14.2 million. With an added land value of \$3.4 million, based on the Agency's cost to acquire the Site, it is estimated that the completed project will have an assessed value of approximately \$17.7 million. Based on this value, the total revenue stream from property tax increments to the Agency over the life of the Project is estimated to be \$3.13 million. Discounted to present value, the tax increment value is estimated to be \$1.7 million.
- 3. Reversion Value:** Because the Agency/City will continue to own the land and improvements after the term of the Lease, the Property will have ongoing value. Based on a present value of approximately \$17 million, the future value of the project (net of the City's parking garage) is estimated to be \$74.5 million. Discounted to present value, the reversion value is estimated to be \$2.8 million.

Net Cost/Gain to the Agency

The net cost to the Agency is the difference between projected revenues and costs:

Agency Revenue (Disc. Present Value)	
Revenue from the Lease	\$1,300,000
Revenue from Tax Increment	\$1,700,000
Potential Value from Reversion	<u>\$2,800,000</u>
Sub-total Agency Revenues	\$5,800,000
 Value of City Parking Garage Asset	 \$3,700,000
 Less Estimated Agency Costs	 (\$7,350,000)
 Net gain to the City/Agency	 <u>\$2,150,000</u>

DRAFT

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA 04-

Introduced by Agency Member _____

mtl
7/15/04

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD APPROVING AND AUTHORIZING THE EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD AND CINEMA PLACE HAYWARD, LLC, AND AUTHORIZING THE EXECUTION OF A COOPERATION AGREEMENT WITH THE CITY OF HAYWARD

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Downtown Hayward Redevelopment Project (the "Redevelopment Project"); and

WHEREAS, the Agency has negotiated a proposed Disposition and Development Agreement (the "DDA") with Cinema Place Hayward, LLC (the "Developer") which provides for the lease and development of certain real property owned by the Agency within the Redevelopment Project (the "Site") with: (i) a two-story retail cinema complex, including approximately 47,700 sq. ft. of rentable retail space on the ground level, a 12-screen, 1,800 seat movie theater on the second level above the retail, plus approximately 7,200 sq. ft. of rentable restaurant space; and (ii) an adjacent four-level 356-space parking garage (the "Parking Structure") to be constructed by the Developer in which the two lower levels (172 spaces) will be privately owned and will serve on-site, non-theater retail tenants and the two upper levels (184 spaces) (the "City Spaces") will be financed by Agency, owned by the City, and will be available to the general public on a non-exclusive basis (the "Development"); and

WHEREAS, attached to the DDA is a proposed Cooperation Agreement between the City and the Agency governing the construction and ownership of the City Spaces; and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the Community Redevelopment Law provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a summary of the financial aspects of the proposal; and

WHEREAS, Community Redevelopment Law provides in Section 33445 that an agency may, with the consent of the legislative body, pay for all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned either within or without the project area, if the legislative body makes certain findings; and

WHEREAS, notice of a joint public hearing by the City Council of the City of Hayward (the "City Council") and the Agency was published in the _____ on _____, 2004 and _____, 2004; and

WHEREAS, an initial study and mitigated declaration have been prepared by the City for the proposed project pursuant to the California Environmental Quality Act ("CEQA"), determining that the proposed project, with the recommended mitigation measures, could not result in significant effects on the environment; and

WHEREAS, the Agency has prepared a summary report (the "Report") pursuant to Section 33433 of the Health and Safety Code describing the cost of the DDA to the Agency, the value of the property interest to be conveyed, and other information required by said Sections 33433, and said Report was made available to the public for inspection.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Hayward as follows:

Section 1. On the basis of the initial study and mitigated negative declaration, the Agency finds and determines that the lease and development of the Site pursuant to the DDA will not have a significant effect on the environment.

Section 2. The Agency hereby finds and determines that:

(a) The payment by the Agency of the cost of construction of the City Spaces is of benefit to the Project Area and the immediate neighborhood in which the Development is located.

(b) No other reasonable means of financing the City Spaces is available to the community.

(c) The lease of the Site by the Agency and payment by the Agency of the cost of construction of the City Spaces will assist in the elimination of blight.

(d) The lease of the Site by the Agency and payment by the Agency of the cost of construction of the City Spaces is consistent with the Implementation Plan for the Redevelopment Project.

The foregoing findings are based on the facts contained in the Report and the staff report of the Agency.

Section 3. The Agency hereby finds and determines that the consideration to be received by the Agency for the lease of the Site is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the DDA and the Lease. This finding is based upon the facts and information contained in the Report.

Section 4. The Agency hereby approves the DDA in substantially the form on file with the Secretary of the Agency, and authorizes the Executive Director to execute the same on behalf of the Agency and to take all actions necessary to carry out its provisions, including, without limitation, the execution of any documents.

Section 5. The Agency finds and determines that the design and construction of the City Spaces is so physically interwoven and interrelated with the design and construction of the Parking Structure that competitive proposals for the construction of the City Spaces would be unavailing, would not produce an advantage, and that advertisement for competitive bid for the construction of the City Spaces would be undesirable and impractical.

Section 6. The Agency hereby approves the Cooperation Agreement attached to the DDA as Attachment No. 6 and authorizes the Executive Director to execute the same on behalf of the Agency and to take all actions necessary to carry out its provision, including, without limitation, the execution of any documents.

HAYWARD, CALIFORNIA _____, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
MAYOR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST: _____
Secretary of the Redevelopment Agency

APPROVED AS TO FORM:

General Counsel

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

ymel
7/15/04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING AND AUTHORIZING THE EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD AND CINEMA PLACE HAYWARD, LLC, AND AUTHORIZING THE EXECUTION OF A COOPERATION AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Downtown Hayward Redevelopment Project (the "Redevelopment Project"); and

WHEREAS, the Agency has negotiated a proposed Disposition and Development Agreement (the "DDA") with Cinema Place Hayward, LLC (the "Developer") which provides for the lease and development of certain real property owned by the Agency within the Redevelopment Project (the "Site") with: (i) a two-story retail cinema complex, including approximately 47,700 sq. ft. of rentable retail space on the ground level, a 12-screen, 1,800 seat movie theater on the second level above the retail, plus approximately 7,200 sq. ft. of rentable restaurant space; and (ii) an adjacent four-level 356-space parking garage (the "Parking Structure") to be constructed by the Developer in which the two lower levels (172 spaces) will be privately owned and will serve on-site, non-theater retail tenants and the two upper levels (184 spaces) (the "City Spaces") will be financed by Agency, owned by the City, and will be available to the general public on a non-exclusive basis (the "Development"); and

WHEREAS, attached to the DDA is a proposed Cooperation Agreement (the "Cooperation Agreement") between the City and the Agency governing the construction and ownership of the City Spaces; and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the Community Redevelopment Law provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a summary of the financial aspects of the proposal; and

WHEREAS, Community Redevelopment Law provides in Section 33445 that an agency may, with the consent of the legislative body, pay for all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned either within or without the project area, if the legislative body makes certain findings; and

WHEREAS, notice of a joint public hearing by the City Council of the City of Hayward (the "City Council") and the Agency was published in the _____ on _____, 2004 and _____, 2004; and

WHEREAS, the Agency has prepared a summary report (the "Report") pursuant to Section 33433 of the Health and Safety Code describing the cost of the DDA to the Agency, the value of the property interest to be conveyed, and other information required by said Sections 33433, and said Report was made available to the public for inspection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

Section 1. The City Council hereby finds and determines that:

(a) The payment by the Agency of the cost of construction of the City Spaces is of benefit to the Project Area and the immediate neighborhood in which the Development is located.

(b) No other reasonable means of financing the City Spaces is available to the community.

(c) The lease of the Site by the Agency and payment by the Agency of the cost of construction of the City Spaces will assist in the elimination of blight.

(d) The lease of the Site by the Agency and payment by the Agency of the cost of construction of the City Spaces is consistent with the Implementation Plan for the Redevelopment Project.

The foregoing findings are based on the facts contained in the Report and the staff report of the Agency.

Section 2. The City Council hereby finds and determines that the consideration to be received by the Agency for the lease of the Site is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the DDA and the Lease. This finding is based upon the facts and information contained in the Report.

Section 3. The City Council hereby approves the DDA in substantially the form on file with the Secretary of the Agency.

Section 4. In connection with the approval of the DDA and the Cooperation Agreement and, in particular, with respect to the construction of the City Spaces, the City Council hereby finds pursuant to Section 2-8.01 of the Municipal Code that it is more beneficial and economical to procure the services for construction of the City Spaces on the open market than to advertise for bids. The City Council further finds and determines that the design and construction of the City Spaces is so physically interwoven and interrelated with the design and construction of the Parking Structure that competitive proposals for the

construction of the City Spaces would be unavailing, would not produce an advantage, and that advertisement for competitive bid for the construction of the City Spaces would be undesirable and impractical.

Section 5. The City Council hereby approves the Cooperation Agreement attached to the DDA as Attachment No. 6 and authorizes the City Manager to execute the same on behalf of the City and to take all actions necessary to carry out its provision, including, without limitation, the execution of any documents.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward